

# Fax

**To:** Michael V. Meller (Art Unit no. 1654)**From:** J. Cantor, B. Shteyngart**Fax:** 718-680-5099**Pages:** 2**Phone:** 718-680-2858**Date:** 12/26/02**Re:** Application no. 09/826,731**CC:**☐ **Urgent**☒ **For Review**☐ **Please Comment**☐ **Please Reply**☐ **Please Recycle****• Comments:**

A response to the office action filed on Oct 7, 2002 is provided on the following page. Prior to final action by the Examiner, we kindly request the opportunity to discuss any remaining objections to placing the claims in condition for allowance. We will contact the Examiner by telephone within the next two weeks.

Cantor, Shteyngart 09/826,731

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**Response to Office Action:**

The Examiner argues that that claims 28-35 are unpatentable over Weaver et al and Gavrilenko et al taken with Kats et al.

With regard to the Examiner's reference to Weaver et al as teaching the use of lysozyme to treat pneumonia, it is stated in column 2, lines 18-22, that:

*"While the antibacterial effects of lysozyme in vitro have been well documented, there has heretofore been no way to exploit these effects of lysozyme for in vivo use. Previous reports furthermore implied that sustained lysozyme administration would be harmful."*

Clearly, Weaver et al are teaching away from the use of lysozyme alone as an agent to treat pneumonia. Indeed, the whole point of the invention described in Weaver et al is to **circumvent any potentially harmful effects of administering native lysozyme** by fusing it with surfactant protein-B. Therefore, the Examiner cannot state that the use of lysozyme to treat pneumonia is made obvious by this reference.

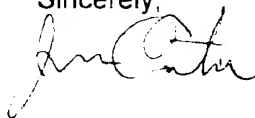
With regard to Gavrilenko et al, the Examiner states that:

*"Further, as noted by Gavrilenko, lysozyme is used to treat chronic bronchitis which also leads to pneumonia."*

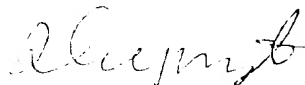
There is no support in the medical literature for the notion that chronic bronchitis leads to pneumonia. Bronchitis (acute or chronic) and pneumonia are two different diseases with different etiologies. Chronic bronchitis is a component of Chronic Obstructive Lung Disease, which encompasses bronchitis, asthma, and emphysema. It involves the upper airways of the respiratory tract and is commonly due to cigarette smoking or exposure to air pollutants, which induce an inflammatory reaction. The Examiner's argument that "...lysozyme is used to treat chronic bronchitis which also leads to pneumonia" is therefore incorrect.

In the absence of any remaining argument that these references make claims 28-35 obvious to one skilled in the art, it is requested that the claims now be placed in condition for allowance.

Sincerely,



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